

No. 12894

United States
Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

PACIFIC ABSTRACT TITLE CO., a Corpora-
tion,
Appellee.

Transcript of Record

Appeal from the United States District Court,
for the District of Oregon.

FILED
JUL 18 1915
PAUL H. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

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Attorneys for Appellant.

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Attorney for Appellee.

In the District Court of the United States for the
District of Oregon

Civil Action No. 5290

PACIFIC ABSTRACT TITLE CO., a Corpora-
tion,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

COMPLAINT

Plaintiff, for cause of action against the above-named defendant, complains and alleges as follows:

I.

That plaintiff is a citizen of the United States residing at Portland, Oregon. That this action is brought in this Court under the jurisdiction and by virtue of Title 28 U.S.C.A., Section 1340 and Section 1346 to recover money erroneously and illegally assessed or collected. That the Collector of Internal Revenue for the District of Oregon, who collected said tax, is not in office at the time of the filing of this action.

II.

That during all times hereinafter set forth, J. W. Maloney was the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon and the person who collected the erroneous and illegally assessed tax, but that said J. W. Maloney is no longer in office as Collector of In-

ternal Revenue for the District of Oregon.

III.

That plaintiff was required to and did under oath, file its income tax return on or before the 15th day of March, 1946, for the calendar year 1945 with the Collector of Internal Revenue at Portland, Oregon. That such return was filed presumably by the Commissioner of Internal Revenue on Form 1120 and 1121.

IV.

That such return was filed on an accrual basis which specifically stated the items of plaintiff's gross income and the deductions and credits allowed by the Internal Revenue Code. That plaintiff paid the amount of the tax showing to be owing to the United States on said return as required to said Collector of Internal Revenue for the District of Oregon in installments as permitted under Title 26 U.S.C.A., Section 56.

V.

That at all times hereinafter set forth, the plaintiff was carrying on the business of insuring titles to real property for compensation in the business commonly known as a title insurance business, and said business is subject to the Insurance Code of the State of Oregon, being Title 101 O.C.L.A. Sections 101-101 through 101-1803. That under said Insurance Code of the State of Oregon, Section 101-136 provides in part:

“The insurance commissioner shall, whenever

he deems it advisable in the interest of policyholders or for the public good, examine into the affairs of any insurance company, agency, corporation, partnership, person or persons engaged in * * * the insurance business in this state * * *. It shall be the duty of the insurance commissioner to examine every domestic insurance company at least once in three years.”

That Section 101-137 O.C.L.A. provides as follows:

“Examination: Reserve: Liability: (Formulating or adopting rules). In ascertaining the condition of an insurance company under the provisions of this act, or in any examination made by the insurance commissioner, his deputy, or examiner, he shall allow as assets only such investments, cash and accounts as are authorized by the laws of this state at the date of the examination, or under the existing laws of the state or country under which such company is organized and which investment he may approve or reject, but unpaid premiums on policies written within three months shall be admitted as available resources. In ascertaining his liabilities, unless otherwise provided in this act, there shall be charged the capital stock, all outstanding claims, a sum equal to the total unearned premiums on the policies in force computed on a pro rata basis, and such an amount as may be found necessary as a reserve to provide for the future payment of deferred and undetermined claims for losses and promised

benefits. In determining the amount of such reserve or unearned premium liability, the insurance commissioner, his deputy or examiner may formulate such rules as he may deem proper and consistent with law or he may adopt such rules as are used in other states or approved by the national convention of insurance commissioners.’’

VI.

That during the year 1945, the Insurance Commissioner of the State of Oregon examined plaintiff’s business under and by virtue of Section 101-136 O.C.L.A. and on January 12, 1946, pursuant to the authority vested in him and by virtue of Section 101-137 O.C.L.A., he ordered the plaintiff to establish, segregate and maintain an unearned premium of reinsurance reserve as hereafter provided, which shall at all times and for all purposes be deemed and shall constitute unearned portions of the premiums and shall be charged as a reserve liability of the corporation in its statements; such reserve shall be cumulative and consist of the following:

(a) As at December 31, 1945, or within a period of three years thereafter an amount equal to 3% of the total gross fees and premiums received or to be received on account of policies issued during the four calender years—1942, 1943, 1944 and 1945; and

(b) Monthly at the close of each month beginning January, 1946, 3% of the total gross fees and premiums received or to be received on account of policies written during the preceding calendar month;

(c) After the expiration of 180 months from January 1, 1942, that portion of the unearned premiums or reinsurance reserve established more than 180 months prior shall be released and shall no longer constitute part of the unearned premium or reinsurance reserve and may be used for any corporate purpose.

VII.

That the Insurance Code of the State of Oregon provides that no insurance company may operate in the State of Oregon without first having obtained a license from the Insurance Commissioner of the State of Oregon; that in the event of the violation of any orders of the Insurance Commissioner or law of the State of Oregon, said Commissioner may revoke said license.

VIII.

That under and by virtue of the request of the Insurance Commissioner of the State of Oregon, the plaintiff set up a reserve on its return for the year 1945 in accordance with a directive of the said Insurance Commissioner of 3% of its gross premiums for the calendar years 1942, 1943, 1944 and 1945 of \$18,614.63 as an allowable reserve under Title 26, U.S.C.A., Section 204.

IX.

That after said return was filed, the Commissioner of Internal Revenue caused same to be audited. That thereupon the said Commissioner, by deficiency letter dated November 2, 1948, adjusted the amount of gross and net income reported in plaintiff's said re-

turn. That the Commissioner of Internal Revenue thereby determined that plaintiff was subject to an additional income tax for the calendar year 1945 in the amount of the claimed deficiency of \$15,979.27. That such deficiency was computed by the Commissioner by disallowing \$18,665.58 in which disallowance was included: taxes of \$35.95 and anticipated expenses of \$15.00 and adjusting said net income from \$67,470.72 to \$86,136.30 and adjusting the excess profits net income of \$48,168.61 and deducting an over-assessment of \$32.96, or a total adjustment of net income in the amount of \$86,136.30 instead of \$67,470.72 as originally reported on said return by plaintiff.

X.

That said determination is erroneous and illegal in that \$15,979.27 was reserve ordered by the Insurance Commissioner of the State of Oregon by virtue of the laws of the State of Oregon to cover unearned premiums and policies written for the years 1942, 1943, 1944 and 1945 and which reserve is set aside and taken away from the jurisdiction of the Board of Directors and is not available as surplus or for the payment of dividends to Stockholders for a minimum period of 15 years.

XI.

That pursuant to said deficiency letter, the Commissioner of Internal Revenue erroneously and illegally assessed plaintiff in the additional amount of said alleged deficiency of \$15,979.27. That on February 28, 1949, plaintiff paid to the defendant the

entire amount of said assesement, to wit: the sum of \$15,979.27 and on March 22, 1949, in addition thereto, plaintiff paid accrued interest to date in the amount of \$2,825.92.

XII.

That on the 20th day of June, 1949, plaintiff filed a claim for refund for \$15,979.27 plus said \$2,825.92 interest on said sum, with the Collector of Internal Revenue for the District of Oregon as required by and pursuant to 26 U.S.C.A., Section 3772 (a) (1), on Form 843 prescribed by the Commissioner of Internal Revenue pursuant to 26 U.S.C.A., Section 3901 (2), a copy of which is hereto attached marked Exhibit "A," referred to and made a part hereof. That plaintiff herein realleges all the matters and things contained in said claim for refund. That more than six months have elapsed since the filing of said claim and no notice of allowance or disallowance has been received from the Commissioner of Internal Revenue.

Wherefore, plaintiff demands judgment against the defendant for the sum of \$18,805.19 together with interest at the rate of 6% per annum and for its costs and disbursements incurred herein.

/s/ WILL H. MASTERS,
Attorney for Plaintiff.

EXHIBIT A

Claim

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

- ☐ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

State of Oregon,
County of Multnomah—ss.

Name of taxpayer: Pacific Abstract Title Co.

Business address: 408 S. W. Oak Street, Portland,
Oregon.

Residence: State of Oregon.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: District of Oregon.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from Jan. 1, 1945, to Dec. 31, 1945.

3. Character of assessment or tax: Corporation excise profit tax.
4. Amount of assessment \$15,979.27; dates of payment Feb. 28, 1949. \$2,825.92, interest, March 22, 1949.
5. Date stamps were purchased from the Government
6. Amount to be refunded: \$18,805.19 \$18,805.19
7. Amount to be abated (not applicable to income, gift, or estate taxes)\$.....
8. The time within which this claim may be legally filed expires, under section 3772-2 of Internal Revenue Code on November 2, 1950.

The deponent verily believes that this claim should be allowed for the following reasons:

The Insurance Commissioner of the State of Oregon, upon examination of our business for the year 1945, ordered us as of December 31st, 1945, to reduce our earnings in an amount equal to 3% of the total gross fees and premiums received on account of policies of insurance issued during the four calendar years, 1942, 1943, 1944, 1945, and to set up monthly at the close of each month, beginning January 1st, 1946, 3% of the total gross fees and premiums received or to be received on account of policies of insurance written during the preceding calendar month. The Insurance Commissioner based his authority to order this under the provision of Section 101-136, O.C.L.A. We were, therefore, compelled under the law and under the order of the

Insurance Commissioner to reduce our earnings accordingly; otherwise, the Insurance Commissioner would refuse to issue a permit to us to do business.

The Insurance Commissioner of the State of Oregon has jurisdiction and authority over all accounting and financial transactions that we have in order to insure the financial protection of all policyholders. The order of the Insurance Commissioner of the State of Oregon is so comprehensive that this amount of earnings is set aside and taken away from the jurisdiction of the Board of Directors and is not available to us as a surplus or for the payment of dividends to stockholders for a minimum period of 15 years.

We, therefore, submit that this reserve has been created under the laws of the State of Oregon and that said tax has been illegally assessed and collected.

Subscribed and sworn to before me this 15th day of June, 1949.

.....,
Notary Public for Oregon.

My Commission expires:

/s/ PACIFIC ABSTRACT TITLE
CO.

By,
President.

By,
Secretary.

[Title of District Court and Cause.]

ANSWER

The defendant, the United States of America, by its attorney, Henry L. Hess, United States Attorney for the District of Oregon, for answer to the complaint herein states:

I.

Admits the allegations contained in paragraphs I, II, III, IV, and V of the complaint.

II.

Denies the allegations contained in paragraph VI of the complaint, except that defendant admits that the Insurance Commissioner of the State of Oregon ordered plaintiff to establish, segregate, and maintain an unearned premium reserve which shall be cumulative and consist of the following:

(a) As at December 31, 1945, or within a period of three years thereafter an amount equal to 3% of the total gross fees and premiums received or to be received on account of policies issued during the four calendar years—1942, 1943, 1944 and 1945; and

(b) Monthly at the close of each month beginning January, 1946, 3% of the total gross fees and premiums received or to be received on account of policies written during the preceding calendar month;

(c) After the expiration of 180 months from January 1, 1942, that portion of the unearned premiums or reinsurance reserve established more than 180 months prior shall be released and shall no

longer constitute part of the unearned premium or reinsurance reserve and may be used for any corporate purpose.

III.

Denies the allegations contained in paragraph VII of the complaint, except that defendant admits that the Insurance Code of the State of Oregon provides that no insurance company may operate in that state without first having obtained license from the Insurance Commissioner of that state.

IV.

Admits the allegations contained in paragraphs VIII and IX of the complaint, except that defendant avers that plaintiff's excess profits net income for the calendar year 1945 as adjusted by the Commissioner of Internal Revenue was \$48,160.61 instead of \$48,168.61.

V.

Denies each and every allegation contained in paragraph X of the complaint.

VI.

Denies the allegations contained in paragraph XI of the complaint, except that defendant avers that on February 28, 1949, plaintiff paid to Hugh H. Earle, Collector of Internal Revenue for the District of Oregon the sum of \$15,979.27, representing the deficiency determined by the Commissioner of Internal Revenue with respect to the calendar year 1945, and on March 24, 1949, plaintiff paid to said Collector accrued interest on said deficiency in the amount of \$2,825.92.

VII.

For answer to paragraph XII of the complaint, defendant admits that on June 20, 1949, plaintiff filed a claim for refund of \$15,979.27, representing the deficiency in excess profits tax determined with respect to the calendar year 1945 and interest thereon in the amount of \$2,825.92 with the Collector of Internal Revenue for the District of Oregon, and that Exhibit A attached to the complaint herein is a true copy of said claim for refund, but defendant denies each and every allegation contained in said claim for refund not specifically hereinbefore admitted or denied, except that defendant admits that more than six months have elapsed since the filing of said refund claim and no action thereon has been taken by the Commissioner of Internal Revenue.

VIII.

Denies each and every allegation contained in the complaint not hereinbefore specifically admitted or denied.

Wherefore, the defendant prays that the complaint be dismissed and that the defendant be given judgment in its favor, together with the costs and disbursements of this action.

HENRY L. HESS,

United States Attorney

Attorney for United
States.

THOMAS R. WINTER,
Special Assistant to the Attorney General.

/s/ VICTOR E. HARR,
Assistant United States Attorney.

United States of America,
District of Oregon—ss.

I, Victor E. Harr, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service upon the plaintiff of the foregoing Answer of Defendant by depositing in the United States Post Office at Portland, Oregon, on the 21st day of April, 1950, a duly certified copy thereof, enclosed in an envelope, with postage thereon prepaid, addressed to Will H. Master, Yeon Building, Portland 4, Oregon, Attorney of record for plaintiff.

/s/ VICTOR E. HARR,
Assistant United States Attorney.

[Endorsed]: Filed April 21, 1950.

[Title of District Court and Cause.]

PRE-TRIAL ORDER

This cause coming on for pre-trial before the Hon. James Alger Fee, United States District Judge, on July 12, 1950, plaintiff being represented by Will H. Masters, its attorney, and defendant being represented by Henry L. Hess, United States Attorney, and Victor E. Harr, Assistant United States Attorney.

Based upon proceedings had at said pre-trial, it is hereby

Ordered that the following matters are admitted as to the issues framed by the complaint herein and by the answer to the complaint and by the parties and may be deemed as facts established in the case.

I.

That plaintiff is a citizen of the United States residing at Portland, Oregon. That this action is brought in this Court under the jurisdiction and by virtue of Title 28, U.S.C.A., Section 1340 and Section 1346, to recover money alleged to have been erroneously and illegally assessed and collected.

II.

That during all times hereinafter set forth, J. W. Maloney was the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon and the person who collected the allegedly erroneous and illegally assessed tax, but that said J. W. Maloney is no longer in office as Collector of Internal Revenue for the District of Oregon.

III.

That plaintiff was required to and did under oath, file its income and excess profits returns on Form 1120 and 1121 on or before the 15th day of April, 1946, for the calendar year 1945 with the Collector of Internal Revenue at Portland, Oregon, copies of the returns are pre-trial Exhibit 3.

IV.

It is agreed that the Court shall take judicial notice of the laws of Oregon.

V.

During the year 1945 the Insurance Commissioner of the State of Oregon through his duly appointed agents examined plaintiff's business, and on January 12, 1946, mailed the plaintiff a letter, pre-trial Exhibit 1, which letter was duly received by plaintiff.

VI.

That on or about November 22, 1948, the Commissioner of Internal Revenue determined that the exclusion shown in the return of \$18,614.63 as a reserve set up by plaintiff on its books, as of December 31, 1945, was improper and excluded the amount of the reserve in determining the plaintiff's tax liability for the calendar year 1945. The Commissioner recomputed plaintiff's income tax liability on the basis of the adjustment and determined a deficiency in plaintiff's income tax liability for the calendar year 1945 in the amount of \$15,979.27, which deficiency was duly assessed against plaintiff and

was paid with accrued interest of \$2,825.92 on March 22, 1949, to J. W. Maloney, Collector of Internal Revenue. Said Collector is no longer in office.

VII.

Plaintiff set up on its books, as aforementioned, on December 31, 1945, a reserve for purported unearned premiums as follows:

3 per cent of 1942 premiums....	\$ 2,780.17
3 per cent of 1943 premiums....	3,885.46
3 per cent of 1944 premiums....	4,829.59
3 per cent of 1945 premiums....	7,119.41

Total Reserve.....\$18,614.63

VIII.

Plaintiff filed on or about June 20, 1949, a claim for refund, pre-trial Exhibit 5. More than six months elapsed from the filing of the claim and institution of this suit.

IX.

Pursuant to Section 101-1501 and 101-1502, O.C.L.A., the plaintiff deposited with the Treasurer of the State of Oregon securities of the value of \$100,000.00, and that such deposit was made many years prior to 1945 and is unrelated to the reserve set up on the books of the company and referred to in the letter of the Insurance Commissioner dated January 12, 1946.

Disputed Facts

Plaintiff alleges and defendant denies the following:

That the rule requiring segregation and main-

tenance of an unearned premium or reinsurance reserve to be set up by the plaintiff as set forth in the letter of January 12, 1946, to the plaintiff by the Insurance Commissioner of the State of Oregon, was promulgated on December 26, 1945, by the Insurance Commissioner of the State of Oregon. That prior to that time plaintiff had been informed by the Insurance Commissioner of the State of Oregon that the rule would be made in the year 1945, and informed plaintiff what the rule would contain, and that said rule would apply to all title insurance companies in the State of Oregon. That in December, 1945, plaintiff had seen the rule as set forth in a letter by the Insurance Commissioner of the State of Oregon to the Title and Trust Company, dated December 26, 1945, pre-trial Exhibit 2.

Issue

Did the Commissioner of Internal Revenue err in not allowing plaintiff to exclude from its taxable income for the year 1945 the amount of \$18,614.63 constituting the purported reserve set up on its books in compliance with the direction of the Insurance Commissioner of the State of Oregon?

Contentions of Plaintiff

I.

Plaintiff contends that the sum of \$18,614.63 is an allowable reserve as defined in Section 204 (b) (s) of the Internal Revenue Code.

II.

That the plaintiff is an insurance company under the laws of the State of Oregon and is subject to all

the rules and regulations and laws of the State of Oregon with reference to insurance companies.

III.

That plaintiff was ordered by the Insurance Commissioner of the State of Oregon under the laws of the State of Oregon with reference to insurance companies on December 26, 1945, to set up on its books as of December 31, 1945, a reserve of 3 per cent of its gross premiums for 180 months as a reserve for unearned premiums or reinsurance reserve.

IV.

That the Insurance Commissioner of the State of Oregon had authority under the laws of the State of Oregon to order said reserve to be set up upon the books of the plaintiff and removed from the jurisdiction of the Board of Directors.

V.

That the exclusions of said reserve from our taxable income was properly shown in 1945 for the reason that that time our liability thereunder was definitely fixed.

Contentions of Defendant

I.

That the so-called directive of the Commissioner of Insurance was invalid and unenforceable under the laws of the State of Oregon.

II.

If it is held that the direction of the Commissioner of Insurance is valid and enforceable under

Oregon law, it is ineffectual insofar as plaintiff's taxable income for 1945.

III.

In the event the Commissioner of Insurance's direction to set up the reserve was lawful and equivalent to a statutory requirement and if the retroactive aspect of the case does not defeat the deduction, plaintiff is still not entitled to exclude from its taxable income for the calendar year 1945 the full amount of the reserve of \$18,614.63 since the reserve was set up to cover the taxable years 1942, 1943, 1944 and 1945. In other words, if plaintiff is entitled to a deduction on account of the reserve, the deduction should be spread over the years from 1942 to 1945 inclusive.

IV.

The reserve is not of the character allowable as an exclusion under the revenue statutes.

V.

In adopting Section 204 of the Internal Revenue Code, Congress intended to provide for a general or "nation-wide" system of taxation for insurance "other than life or mutual." It did not and has not manifested an intention that so-called "directives" issued by state officials from time to time to individual companies doing business in their respective states shall be taken into consideration in determining the income tax liability of companies which received them.

Exhibits

It Is Ordered that the parties may offer in evi-

dence at the trial of this action any and all of the following pre-trial exhibits without further identification or authentication, each of the parties, however, having reserved the right to object on other grounds to the admission in evidence of any or all said exhibits, to wit:

Plaintiff's Pre-Trial Exhibits

Exhibit Number 1—Letter of January 12, 1946, from Insurance Commissioner of Oregon to plaintiff.

Exhibit Number 2—Letter of December 26, 1945, from Insurance Commissioner of Oregon to Title and Trust Co.

Exhibit Number 3—Income and Declared Value Excess Profits tax returns of the plaintiff for the calendar year 1945, Forms 1120 and 1121.

Exhibit Number 4—90-day deficiency letter with statement attached from the Commissioner of Internal Revenue to plaintiff, dated November 2, 1948.

Exhibit Number 5—Claim for refund for year 1945.

Exhibit Number 6—Schedule of Gross Fees received by the plaintiff for the period 1942-1945, inclusive.

Exhibit Number 7—Copy of Annual Statement to Insurance Commissioner of the State of Oregon (conventional form) for the calendar years 1942, 1943, 1944 and 1945.

Exhibit Number 8—Specimen forms of title insurance policies used by plaintiff during the period involved.

Exhibit Number 9—Agent's report dated Feb. 6, 1948.

It is further ordered and agreed that this pre-trial order will govern the course of the trial and will not be amended except by consent or to prevent manifest injustice. This pre-trial order will take the place of the pleadings. The parties agree to waive a jury and have the case tried before the Court sitting without a jury.

The Court, finding that the foregoing clearly and accurately reflects the pre-trial conference had herein and the stipulations and agreements of the parties, hereby ratifies and confirms the foregoing proceedings in all things, and does hereby

Order that the said pre-trial order be and the same is hereby incorporated into and hereby made a part of the record in this case for the purpose of controlling the course of proceedings on the formal trial hereof before the Court.

Dated this 12th day of July, 1950.

/s/ JAMES ALGER FEE,
District Judge.

Approved:

/s/ WILL H. MASTERS,
Of Attorneys for Plaintiff.

/s/ VICTOR E. HARR,
Of Attorneys for Defendants.

[Endorsed]: Filed July 12, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause coming on for hearing before the Honorable Gus J. Solomon, Judge of the above-entitled Court, on the 13th day of July, 1950, and the plaintiff appearing by its attorney, Will H. Masters of Masters & Masters, and the defendant appearing by Henry L. Hess, United States District Attorney for the District of Oregon, and James P. Garland, Special Assistant to the Attorney-General of the United States, and the Court after hearing the evidence on the part of the plaintiff and defendant and the arguments of counsel and being fully advised in the premises, makes the following:

Findings of Fact

I.

That plaintiff is a citizen of the United States, residing at Portland, Oregon. That this action is brought in this Court under the jurisdiction and by virtue of Title 28, U.S.C.A., Section 1340 and Section 1346, to recover money erroneously and illegally assessed or collected.

II.

That during all times hereinafter set forth, J. W. Maloney was the duly appointed, qualified and acting Collector of Internal Revenue for the District of Oregon and the person who collected the erroneous and illegally assessed tax, but that said J. W.

Maloney is no longer in office as Collector of Internal Revenue for the District of Oregon.

III.

That plaintiff was required to and did under oath, file its income and excess profits returns on Forms 1120 and 1121 on or before the 15th day of April, 1946, for the calendar year 1945, with the Collector of Internal Revenue at Portland, Oregon.

IV.

That during the year 1945, the Insurance Commissioner of the State of Oregon, through his duly appointed agents, examined plaintiff's books and on January 12, 1946, ordered the plaintiff, under and by virtue of Sections 101-136 and 101-137, O.C.L.A., to establish, segregate and maintain an unearned premium of reinsurance reserve which shall at all times and for all purposes constitute unearned portions of the premiums and shall be charged as a reserve liability of the corporation in its statements; such reserve shall be accrued and consist, as at December 31, 1945, for the years 1942, 1943, 1944 and 1945, of an amount equal to 3% of the total gross fees and premiums received or to be received on account of policies issued during said calendar years, and thereafter monthly at the close of each month, beginning January, 1946, 3% of the total gross fees and premiums received or to be received on account of policies written during the preceding calendar month, and after the expiration of 180 months from January 1, 1942, that

portion of the unearned premiums or reinsurance reserve established more than 180 months prior shall be released and shall no longer constitute part of the unearned premium or reinsurance reserve and may be used for any corporate purpose.

V.

That in December, 1945, the Insurance Commissioner of the State of Oregon informed plaintiff that said reserve would have to be set up as of December 31, 1945, and on December 26, 1945, the Title and Trust Company, Portland, Oregon, was ordered to set said reserve up and said order was shown to the plaintiff. That said Insurance Commissioner of the State of Oregon, in December, 1945, informed plaintiff that said order would be made as to all title insurance companies in the State of Oregon.

VI.

That on or about November 22, 1948, the Commissioner of Internal Revenue determined that the exclusion shown in the return of \$18,614.63 as a reserve set up by plaintiff on its books, as of December 31, 1945, was improper and excluded the amount of the reserve in determining the plaintiff's tax liability for the calendar year 1945. The Commissioner recomputed plaintiff's income tax liability on the basis of the adjustment and determined a deficiency in plaintiff's income tax liability for the calendar year 1945 in the amount of \$15,979.27, which deficiency was duly assessed against plaintiff and was paid with accrued interest of \$2,825.92 on

March 24, 1949, to J. W. Maloney, Collector of Internal Revenue, which Collector is no longer in office.

VII.

Plaintiff set up on its books, as aforementioned, on December 31, 1945, a reserve for purported unearned premiums as follows:

3% of 1942 premiums.....	\$ 2,780.17
3% of 1943 premiums.....	3,885.46
3% of 1944 premiums.....	4,829.59
3% of 1945 premiums.....	7,119.41

Total Reserve\$18,614.63

VIII.

That on or about June 20, 1949, plaintiff filed a claim for refund on the ground that said reserve was legally set up by the State of Oregon and was taken away from the jurisdictional authority of the Board of Directors and was not available to said plaintiff as a surplus or as payment of dividends to the stockholders. That more than six months have elapsed since the filing of said claim and the institution of action herein.

IX.

That pursuant to Sections 101-1501 and 101-1502, O.C.L.A., plaintiff deposited with the Treasurer of the State of Oregon securities in the value of \$100,000.00 and that said deposit was made many years prior to 1945 and is unrelated to the reserve set up on the books of the company.

From the foregoing Findings of Fact, the Court makes the following:

Conclusions of Law

I.

That the plaintiff was an Insurance Company under the Insurance Laws of the State of Oregon and the Commissioner of Insurance of the State of Oregon had jurisdiction over said plaintiff; that said Insurance Commissioner of the State of Oregon had authority under the laws of the State of Oregon to order said reserve to be set up on the books of the plaintiff and remove from the jurisdiction of the Board of Directors the said sum of \$18,614.63 as an allowable reserve as defined in Section 204 (b) (s) of the Internal Revenue Code.

II.

That the exclusion of the reserve from plaintiff's taxable income was properly shown as of December 31, 1945.

III.

That the Commissioner of Internal Revenue erred in excluding said reserve as a reserve and including the same in income.

IV.

That plaintiff is entitled to recover from the defendant the sum of \$18,805.19 together with interest

at the rate of 6% per annum from February 28, 1945.

Dated this 17th day of November, 1950.

/s/ GUS J. SOLOMON,
Judge.

State of Oregon,
County of Multnomah—ss.

Due and legal service of the within Findings of Fact and Conclusions of Law by receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 9th day of November, 1950.

/s/ VICTOR E. HARR,
Of Attorneys for Defendant.

[Endorsed]: Filed November 17, 1950.

In the United States District Court
for the District of Oregon
Civil Action No. 5290

PACIFIC ABSTRACT TITLE CO., a Corpora-
tion,

Plaintiff,

vs.

UNITED STATES,

Defendant.

JUDGMENT

This cause coming on for trial before the Honorable Gus J. Solomon, Judge of the above-entitled

Court, on the 13th day of July, 1950, and the plaintiff appearing by its attorney, Will H. Masters of Masters & Masters, and the defendant appearing by Henry L. Hess, United States District Attorney for the District of Oregon, and James P. Garland, Special Assistant to the Attorney-General of the United States, and based upon the Findings of Fact and Conclusions of Law herein, it is hereby

Ordered and Adjudged, that the plaintiff have and recover of and from the defendant the sum of \$18,805.19 together with interest as provided by law.

Dated and Entered this 17th day of November, 1950.

/s/ GUS J. SOLOMON,
Judge.

[Endorsed]: Filed November 17, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Pacific Abstract Title Co., plaintiff, and Will H. Masters, its attorney:

Notice is hereby given that the United States of America, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Judgment entered in this action on the 17th day of November, 1950, in favor of plaintiff and against defendant.

Dated this 9th day of January, 1951, at Portland, Oregon.

HENRY L. HESS,

United States Attorney for
the District of Oregon.

/s/ VICTOR E. HARR,

Assistant United States
Attorney.

[Endorsed]: Filed January 11, 1951. ,

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME

Comes now the defendant above named, by and through its attorneys, Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, and moves the Court for an order extending the time for filing the record on appeal and docketing the within action in the Circuit Court of Appeals to ninety days from the first date of filing of said Notice of Appeal. This motion is based on the grounds that the Department of Justice requires additional time to fully consider said appeal.

Dated at Portland, Oregon, this 12th day of February, 1951.

HENRY L. HESS,
United States Attorney for
the District of Oregon.

/s/ VICTOR E. HARR,
Assistant United States
Attorney.

[Endorsed]: Filed February 13, 1951.

[Title of District Court and Cause.]

ORDER

This matter coming on to be heard ex parte this day upon motion of defendant, through its attorneys, Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, for an order extending time for the filing of the record on appeal and docketing the within action in the Circuit Court of Appeals, to enable the Department of Justice to have additional time to consider said appeal, and the Court being fully advised in the premises,

It Is Ordered that the time for filing the within appeal and docketing the action be, and it is hereby, extended to ninety days from the first date of the Notice of Appeal.

Made and Entered at Portland, Oregon, this 13th day of February, 1951.

/s/ GUS J. SOLOMON,
District Judge.

[Endorsed]: Filed February 13, 1951.

In the United States District Court
for the District of Oregon

Civil No. 5290

PACIFIC ABSTRACT TITLE CO., a Corpora-
tion,

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

DOCKET ENTRIES

1950

Mar. 1—Filed complaint.

Mar. 1—Issued summons—to marshal.

Mar. 8—Filed summons with marshal's return.

Mar. 15—Filed affidavit of Will H. Masters re serv-
ice by mail.

Apr. 21—Filed answer.

May 15—Entered order setting for trial on Septem-
ber 19, 1950—10 a.m.

May 22—Entered order resetting for trial on June
6, 1950—10 a.m.

June 8—Entered order striking from trial calen-
dar.

June 23—Entered order setting for trial July 13,
1950.

June 26—Filed motion of U. S. for judgment on
the pleadings.

July 12—Filed and entered pre-trial order.

July 13—Record of trial before court and order
continuing to July 17, 1950—2 p.m.

July 17—Filed stipulation re testimony of A. C.
Olshen.

1950

July 17—Entered order allowing withdrawal of motion of U. S. for judgment on the pleadings; record of further trial and order allowing ptff. 20 days to submit brief; deft. 20 days thereafter and ptff. 10 days thereafter and order reserving.

Aug. 1—Filed brief of plaintiff.

Aug. 12—Filed transcript of testimony at trial July 13, 1950.

Aug. 17—Filed stipulation for time for U. S. to file brief.

Aug. 17—Filed and entered order allowing U. S. to and including Sept. 15 to file brief.

Sept. 15—Filed brief for the United States.

Sept. 25—Filed stipulation re time for pltf. to file reply brief.

Sept. 25—Filed and entered order extending time to and inc. Oct. 2, 1950, to file reply brief.

Oct. 2—Filed reply brief of plaintiff.

Oct. 31—Record of oral opinion and order that pltf. prepare Findings, Conclusions and Judgment.

Nov. 9—Filed exhibits Nos. 7a to 7d, inc.

Nov. 17—Filed and entered Findings of Fact and Conclusions of Law.

Nov. 17—Filed and entered judgment.

1951

Jan. 11—Filed notice of appeal by U. S. Copy to Atty. Masters.

Feb. 13—Filed motion for order extending time for filing and docketing appeal.

1951

Feb. 13—Filed and entered order extending time
for filing and docketing appeal.

Apr. 6—Filed designation of record.

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents, consisting of complaint, answer, motion for judgment on the pleadings, pre-trial order, stipulation re testimony of A. C. Olshen, Findings of Fact and Conclusions of Law, Judgment, Notice of Appeal, motion for extension of time to file record, order extending time to file record on appeal, designation of contents of record on appeal, and transcript of docket entries, constitute the record on appeal from a judgment of said court therein numbered Civil 5290, in which the Pacific Abstract Title Co., a corporation, is plaintiff and appellee, and the United States of America is defendant and appellant; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

In Testimony Whereof I have hereunto set my

hand and affixed the seal of said court in Portland, in said District, this 7th day of April, 1951.

[Seal] LOWELL MUNDORFF,
Clerk.

By /s/ F. L. BUCK,
Chief Deputy.

PRE-TRIAL EXHIBIT No. 1

State of Oregon
Department of Insurance
Fire Marshal Department
Salem

January 12, 1946

Pacific Abstract Title Company,
408 S. W. Oak Street,
Portland 4, Oregon.

Dear Sirs:

Pursuant to Section 101-136, O. C. L. A., an examination of your Company was made as of September 30, 1945, by a duly authorized examiner of this department. Enclosed herewith is a copy of the examination report.

On page 16 of said report attention is called to the advisability of making adequate reserve provision for unearned premiums. Study has been given by the Department towards the formulation of a reasonable, adequate, and sound rule for the determination of such a reserve. Consideration was given to the trend of your experience, premium

volume, and size and types of risks underwritten. In order to make broader comparison with the requirements and procedures followed in other states as regards such reserves, the statutes of the various states were analyzed. As a consequence, in accordance with the provisions of Section 101-137, O. C. L. A., the following rule has been promulgated as applicable to your Company.

1. The Pacific Abstract Title Company shall establish, segregate and maintain an unearned premium or reinsurance reserve as hereafter provided, which shall at all times and for all purposes be deemed and shall constitute unearned portions of the premiums and shall be charged as a reserve liability of your corporation in your statements; such reserve shall be cumulative and shall be established and shall consist of the following:

(a) As at December 31, 1945, or within a period of three years thereafter an amount equal to 3% of the total gross fees and premiums received or to be received on account of policies issued during the four calendar years—1942, 1943, 1944 and 1945; and

(b) Monthly at the close of each month beginning January, 1946, 3% of the total gross fees and premiums received or to be received on account of policies written during the preceding calendar month;

(c) After the expiration of 180 months from January 1, 1942, that portion of the unearned premium or reinsurance reserve established more than 180 months prior shall be

released and shall no longer constitute part of the unearned premium or reinsurance reserve and may be used for any corporate purposes.

2. Hereafter the Pacific Abstract Title Company shall segregate and maintain a "Title Loss Reserve" at least equal to the aggregate estimated amount due or to become due on account of all unpaid losses and claims upon title insurance policies of which the company has received notice but not less than the aggregate of title losses incurred during the immediately preceding 36 months.

3. Hereafter the Pacific Abstract Title Company shall not issue a policy of title insurance for a single transaction, the face amount of which shall exceed an amount which is five times the capital and surplus of your Company; but nothing herein shall prevent the Pacific Abstract Title Company from assuming the risk on a single policy jointly with another title insurance company or companies in excess of five times the Pacific Abstract Title Company's capital and surplus, provided that the total amount of such insurance shall not exceed five times the total combined capital and surplus of all such companies liable under such insurance; and provided that each such company shall not assume more than its proportionate share of the total amount at risk in accordance with the above-defined maximum retention limit.

If at any date subsequent hereto, upon review or examination as provided in the Oregon Insurance Laws, it is determined that the reserves and pro-

cedures established by the rules as promulgated above are inadequate for the safety and welfare of the policyholders and not in the best interests of the company operations, said rules will be modified as necessary; furthermore should any statute hereafter be adopted by the State of Oregon bearing on this subject, then any sections of these rules inconsistent or in conflict with said statute or statutes shall be automatically voided.

Yours very truly,

/s/ S. B. THOMPSON,

Insurance Commissioner.

SBT:LM

Note: Carbon copy of letter delivered to
J. A. Givens, 9/2/47.
gie

PRE-TRIAL EXHIBIT No. 4

Treasury Department
Internal Revenue Service
Seattle 1, Washington

November 2, 1948

Office of Internal Revenue Agent in Charge,
Seattle Division,
305-A Jones Building,
1331 Third Avenue.

IT:90D:EEH

Pacific Abstract Title Co.,
408 S. W. Oak Street,
Portland, Oregon.

Gentlemen:

You are advised that the determination of your excess profits tax liability for the year ended December 31, 1945, discloses a deficiency of \$16,012.23, and that the determination of your income tax liability for the year mentioned discloses an over-assessment of \$32.96, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington

25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington, for the attention of IT:90D:EEH. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner.

By /s/ S. R. STOCKTON,
Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form of waiver

EEH:EGG

IT:90D:EEH

STATEMENT
Pacific Abstract Title Co.
408 S. W. Oak Street
Portland, Oregon

Tax Liability for the Taxable Year Ended December 31, 1945.

	Liability	Assessed	Over- assessment	Deficiency
Income Tax	\$13,627.11	\$13,660.07	\$32.96	
Excess Profits Tax.....	\$41,177.32	\$25,165.09		\$16,012.23

In making this determination of your income and excess profits tax liability, careful consideration has been given to the report of examination dated November 10, 1947; to your protest dated February 26, 1948; and to the statements made at the conferences held on July 7, 1948, and October 6, 1948.

A copy of this letter and statement has been mailed to your representative, Mr. Will H. Masters, Yeon Building, Portland, Oregon, in accordance with the authority contained in the power of attorney executed by you.

Adjustments to Net Income

Net income as disclosed by return, Form 1120.....	\$67,470.72		
Unallowable deductions and additional income:			
(a) Taxes	\$	35.95	
(b) Anticipated expenses		15.00	
(c) Unearned premiums		18,614.63	18,665.58
Net income, adjusted.....			\$86,136.30

Explanation of Adjustments

(a) On your return you claimed a deduction of \$623.77 for State and County taxes, assessed as of January 1, 1945, and payable in November, 1945. It is held that the deduction for these taxes is allowable in the amount of \$587.82, and your net income is increased by the difference of \$35.95 in the amounts shown.

(b) On your return you claimed a deduction of \$15.00 for City licenses. As your liability for the payment of these licenses had not been determined as of the end of the taxable year, the claimed deduction is disallowed and your net income is increased by the amount shown.

(c) In your income and declared value excess profits tax return for the year 1945 you reported title insurance premiums in the amount of \$218,698.90. The records of this office show that in addition to this sum you received title insurance premiums in the amount of \$18,614.63 which you credited to a reserve for unearned premiums and did not include in gross or net income reported.

The Bureau holds that the total title insurance premiums received by you during the year 1945 were earned in that year. Taxable income reported has, therefore, been increased by the sum of \$18,614.63.

Income Tax Computation

Net income, adjusted.....			\$86,136.30
Less: Adjusted excess profits net income.....			48,160.61
Normal-tax net income and surtax net income.....			<u>\$37,975.69</u>
Normal-tax:	\$ 5,000.00 @ 15%	\$ 750.00	
	15,000.00 @ 17%	2,550.00	
	5,000.00 @ 19%	950.00	
	12,975.69 @ 31%	4,022.46	
Total normal-tax			<u>\$ 8,272.46</u>
Surtax:	\$25,000.00 @ 10%	\$2,500.00	
	12,975.69 @ 22%	2,854.65	
Total surtax			<u>\$ 5,354.65</u>
Income tax liability (normal tax and surtax).....			<u>\$13,627.11</u>
Income tax assessed: Original, Account No. 4100720.....			<u>13,660.07</u>
Overassessment of income tax.....			<u><u>\$ 32.96</u></u>

Adjustments to Excess Profits Net Income

Excess profits net income as disclosed by return (Form 1121)		\$67,470.72
Additions:		
(a) Adjustments to net income.....		<u>18,665.58</u>
Excess profits net income, corrected.....		<u>\$86,136.30</u>

Explanation of Adjustment

(a) Your excess profits net income is increased by the total amount of the additions made to the net income reported on your return, Form 1120, as explained above.

Excess Profits Tax Computation

Excess profits net income, corrected.....		\$86,136.30
Less: Specific exemption	\$10,000.00	
Excess profits credit as determined.....	27,975.69	<u>37,975.69</u>
Adjusted excess profits net income.....		<u>\$48,160.61</u>
Excess profits tax, 95% of \$48,160.61.....		<u>\$45,752.58</u>
Less: 10% credit Section 784, I.R.C.....		<u>4,575.26</u>
Correct excess profits tax liability.....		<u>\$41,177.32</u>
Previous assessment—Original, Account No. 4000283.....		<u>25,165.09</u>
Deficiency in excess profits tax.....		<u><u>\$16,012.23</u></u>

PRE-TRIAL EXHIBIT No. 6

Abstracts	Title Insurance				Escrows
	Pacific Abstract Title Co.				
	408 S.W. Oak Street, Portland, Oregon				
	Schedule of : Gross Fees Received				
	Period Covered : 1942-1945 incl. May 29, 1950				
	1942	1943	1944	1945	Total
Premiums for :					
Title Insurance	\$ 92,672.32	\$129,515.35	\$ 94,896.52	\$144,739.00	\$461,823.19
Fees for :					
Abstracts				8,411.00	8,411.00
Escrows				1,239.80	1,239.80
Other	8,847.05	12,951.65	11,817.43	3,797.25	37,413.38
Totals:	\$101,519.37	\$142,467.00	\$106,713.95	\$158,187.05	\$508,887.37

[Shown in pencil on original under 1944 total: 66,089.83 totaling 72,803.78.]

Footnote: The foregoing figures were taken from the Annual Statement to the Insurance Commissioner of the State of Oregon.

PRE-TRIAL EXHIBIT No. 8

Pacific Abstract Title Co.

408 S. W. Oak Street,
Portland, Oregon

\$	Premium \$	No.
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Owner's Title Insurance Policy

For value, Pacific Abstract Title Co., a corporation (incorporated under the laws of the State of Oregon and duly authorized by the State Insurance

Commissioner to insure titles in said state), hereinafter called the Company,

Does Hereby Insure

subject to the annexed conditions, hereby made a part of this policy,

[Stamped]: Specimen.

heirs and devisees (or if a corporation, its successors) hereinafter called the Insured, against loss or damage not exceeding

Dollars,

which the Insured may sustain by reason of any defects in or unmarketability of the Insured's title to all the estate or interest in the premises specified and hereinafter described or by reason of liens or encumbrances charging the same at the date of this policy, saving and excepting, and this policy does not insure against loss or damage by reason of any estate or interest, defect, lien, encumbrance or objection hereinafter set forth in annexed Schedule B.

Any loss under this policy is to be established in the manner provided in said conditions and shall be paid upon compliance by the insured with and as prescribed in said conditions, and not otherwise.

In testimony whereof, Pacific Abstract Title Co. has caused these presents to be duly signed by its President or Vice-President, attested by its Secretary or Assistant Secretary, under its Corporate seal this

PACIFIC ABSTRACT
TITLE CO.,

By /s/ WILL H. MASTERS,
President.

Attest:

Secretary.

Page 1 of Policy No.

Schedule A

The Estate or interest covered by this policy:

Description of the tract of land the title to which is insured by this policy:

[Stamped]: Specimen.

Page 2 of Policy No.

Schedule B

This policy does not insure against:

1. Any state of facts which an accurate survey and inspection would show; roads, ways and easements not established of record; the existence of county roads; water rights and water locations.

2. Rights or claims of persons in possession, or claiming to be in possession, not shown of record; material or labor liens of which no notice is of record.

3. Matters relating to assessments, if any, preceding the same becoming fixed and shown as a lien; taxes not yet payable, and all matters relating to vacating, opening or other changing of streets or highways preceding the final termination of the same.

4. Provisions and effect of any law or ordinance enacted for the purpose of regulating occupancy or

use of said land or any building or structure thereon.

[Stamped]: Specimen.

Page . . of Policy No.

Conditions

Upon receipt of notice of any defect, lien or incumbrance hereby insured against, the Insured shall forthwith notify the Company thereof in writing. In case any suit, action or proceeding is commenced to which the Insured is a party and which may result in loss under this policy, the Insured shall immediately after learning thereof notify the Company in writing, and within ten (10) days after service of process upon him secure to the Company the right to defend such suit, action or proceeding in the name of the Insured, so far as necessary to protect the Insured, and shall render all reasonable assistance in such defense. The Company will defend such suit, action or proceeding at its own cost, reserving, however, the option of settling the claim or paying this policy in full at any time. But the Company shall in no case be liable for any costs or expense incurred by the Insured in such litigation without its consent.

In the event of final judicial determination by a Court of competent jurisdiction, under which the Insured is dispossessed or deprived of the real estate covered hereby, or his estate or interest insured is impaired by reason of any adverse interest, lien or incumbrance hereby insured against, or, if

this policy covers a mortgagee's interest, if such final judicial determination shall defeat or impair the mortgagor's title to all or any part of the mortgaged premises or establish the priority to the mortgage of a lien or incumbrance not excepted in this policy, claim may be made hereunder, provided, the conditions have been in all ways complied with. Every claim for loss under this policy must be in writing, giving a full statement thereof, and be delivered to the Company at its Home Office within sixty (60) days after such final judicial determination, whereupon the loss hereunder shall be payable to the Insured on or before thirty (30) days.

The Company may at any time pay this policy in full, whereupon all liability of the Company shall terminate. The total liability under this policy, exclusive of costs, shall in no case exceed the face of the policy, and every payment of the Company shall reduce the policy by the amount paid. When the Company shall have paid a loss under this policy it shall be subrogated to all rights and remedies which the Insured may have against any person or property in respect of such claims, or would have if this policy had not been issued, and the Insured shall forthwith transfer all such rights to the Company accordingly. If the payment made by the Company does not cover the loss of the Insured, then such subrogation of the Company shall be proportionate. Or, the Company may, in case this policy covers a mortgagee's interest only, pay the Insured the entire mortgage indebtedness, with interest at the rate specified in the mortgage and thereupon the Insured

shall assign and transfer to the Company the mortgage and the indebtedness thereby secured, with all instruments evidencing or securing the same, or shall convey to the Company any estate lawfully vested in the Insured by virtue of foreclosure of the mortgage, and all liability of the Company shall thereupon terminate.

Where the Insured, in good faith, shall have entered into an enforceable contract, in writing, to sell the insured estate or interest, and the title shall have been rejected because of some defect or incumbrance not excepted in this policy, and notice in writing of such rejection shall have been given to this Company within ten days thereafter; for thirty days after receiving such notice this Company shall have the option of paying the loss of which the Insured must present proper proof, or of maintaining or defending either in its own name or at its option in the name of the Insured some proper action or proceeding, begun or to be begun in a court of competent jurisdiction, for the purpose of determining the validity of the objection alleged by the vendee to the title, and only in case a final determination is made in such action, or proceeding, sustaining the objection to the title, shall this Company be liable on this policy.

If this policy covers a mortgagee's interest only, discharge of the mortgage, otherwise than through foreclosure thereof, or by deed in lieu of foreclosure, shall terminate this policy and all liability of the Company hereunder; but if any Insured acquires said land, or any part thereof, by fore-

closure or in any other legal manner in satisfaction of said mortgage indebtedness, or any part thereof, then this policy shall continue in force in favor of such Insured and each successor in interest in ownership, subject to all of the conditions and stipulations hereof applicable to an owner of land.

Nothing contained in this policy shall be construed as an insurance against defects or incumbrances created subsequent to the date hereof.

[Endorsed]: No. 12894. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Pacific Abstract Title Co., a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed April 9, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 12894

Civil Action No. 5290

PACIFIC ABSTRACT TITLE CO., a Corpora-
tion,

Plaintiff,

vs.

UNITED STATES,

Defendant.

STATEMENT OF POINTS TO BE RELIED
ON BY DEFENDANT-APPELLANT ON
APPEAL

Comes now the United States of America, the defendant-appellant in the above-entitled cause, and states that the points upon which it intends to rely in its appeal are as follows:

The United States District Court for the District of Oregon erred:

1. In concluding that the insurance commissioner of the State of Oregon had authority under the laws of that state to order the plaintiff to set up on its books on December 31, 1945, a reserve for purported unearned premiums computed as follows:

Three per cent of its 1942 premiums.....\$ 2,780.17

Three per cent of its 1943 premiums.....\$ 3,885.46

Three per cent of its 1944 premiums.....\$ 4,829.59

Three per cent of its 1945 premiums.....\$ 7,119.41

Total Reserve\$18,614.63

and also erred in concluding that the insurance commissioner of Oregon had authority to remove from the jurisdiction of the Board of Directors of the plaintiff the said sum of Eighteen Thousand, Six Hundred, Fourteen Dollars and Sixty-three Cents (\$18,614.63), and erred further in concluding that said amount so computed was an allowable reserve as defined in Section 204(b)(5) of the Internal Revenue Code.

2. In concluding that the exclusion of the aforesaid sum of \$18,614.63 from plaintiff's taxable income for the calendar year 1945 was properly shown as of December 31, 1945.

3. In concluding that the Commissioner of Revenue erred in excluding said sum of \$18,614.63 as a reserve and including it in plaintiff's taxable gross income for the calendar year 1945.

4. In concluding that plaintiff is entitled to recover from the defendant the sum of \$18,805.19 paid by plaintiff as federal income tax for the calendar year 1945, together with interest thereon at the rate of six per cent per annum from February 28, 1945.

5. In failing to find and hold that the aforesaid sum of \$18,614.60 computed by plaintiff in accordance with the order or directive of the insurance commissioner of the State of Oregon did not constitute unearned premiums of the plaintiff, or a reserve therefor; and in failing to hold that that amount was not allowable as a reserve within the

terms of Section 204(b)(5) of the Internal Revenue Code.

6. In failing to hold that the Commissioner of Internal Revenue did not err in including the afore-said amount of \$18,614.60 in plaintiff's taxable gross income for the calendar year 1945.

7. In failing to render judgment against the plaintiff and in favor of the defendant, and in failing to dismiss the action.

/s/ HENRY L. HESS,
United States Attorney, Attorney for Defendant-
Appellant.

United States of America,
District of Oregon—ss.

I, Victor E. Harr, Assistant United States Attorney for the District of Oregon, hereby certify that I have made service upon the plaintiff of the foregoing Statement of Points to Be Relied On by Defendant-Appellant on Appeal by depositing in the U. S. Post Office at Portland, Oregon, on the 13th day of April, 1951, a duly certified copy thereof, enclosed in an envelope, with postage thereon prepaid, addressed to Mr. Will H. Masters, Attorney at Law, Yeon Building, Portland 4, Oregon, attorney of record for plaintiff.

/s/ VICTOR E. HARR,
Assistant United States
Attorney.

[Endorsed]: Filed April 16, 1951.

[Title of Court of Appeals and Cause.]

NOTICE AS TO STATEMENT OF POINTS
TO BE RELIED UPON BY APPELLANT
AND AS TO PARTS OF RECORD TO BE
PRINTED

Pursuant to Rule 19(6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, notice is hereby given by the United States of America, appellant on review herein, as follows:

1. The United States hereby adopts, as the Statement of Points upon which it intends to rely in the present appeal, the Statement of Points heretofore filed with the United States District Court for the District of Oregon, and included in the certified typewritten transcript of record filed in this Court in this case;

2. The United States hereby designates for printing the following parts of the record filed in this Court in this cause:

- a. Complaint.
- b. Defendant's Answer to Complaint.
- c. District Court's pre-trial order.
- d. Plaintiff's pre-trial exhibits numbered 1, 4, 6 and 8.
- e. District Court's findings of fact and conclusions of law.
- f. Judgment order.
- g. Notice of appeal.
- h. Motion asking District Court for extension of time to file record on appeal.

- i. Order of District Court entered February 13, 1951, granting 90-day extension of time to file record on appeal.
- j. Statement of Points to be relied upon by appellant, filed with District Court.
- k. Docket entries.
- l. Notice as to Statement of Points, etc., filed by appellant with this Court; and
- m. This notice and designation.

/s/ THERON L. CAUDLE,

Assistant Attorney General,
Counsel for Appellant.

[Endorsed]: Filed April 23, 1951.